

AMENDED IN ASSEMBLY JUNE 23, 2015

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 612

Introduced by Senator Jackson

February 27, 2015

An act to amend Sections 25270.2, 25270.3, 25270.4.1, 25270.4.5, 25270.5, 25270.6, 25281, 25404, ~~25500~~, 25505, 25507, 25507.2, 25508.1, 25531.2, and 118330 ~~of~~ *of, and to add Section 25158.1 to*, the Health and Safety Code, relating to hazardous materials.

LEGISLATIVE COUNSEL'S DIGEST

SB 612, as amended, Jackson. Hazardous materials.

(1) Existing law requires the Department of Toxic Substances Control to establish programs for and regulate hazardous waste source reduction. Existing law requires the department to prepare, adopt, and revise, when appropriate, a listing of the wastes that are determined to be hazardous, and a listing of the wastes that are determined to be extremely hazardous. Existing law requires the department to develop, and adopt by regulation, criteria and guidelines for the identification of hazardous wastes and extremely hazardous wastes and requires that any waste that conforms to the criteria be managed in accordance with permits, orders, and regulations issued by the department. Existing law requires the department to adopt, and revise when appropriate, standards and regulations for the management of hazardous wastes to protect against hazards to the public health, to domestic livestock, to wildlife, or to the environment. Pursuant to this authority, the department has adopted regulations establishing standards for generators of hazardous wastes and establishing standards for owners

and operators of hazardous waste transfer, treatment, storage, and disposal facilities.

This bill would require that a generator of hazardous waste include all hazardous waste that it has generated in any month, except for universal wastes, as defined, when computing whether it is required to comply with specified regulatory requirements. The bill would require the department to adopt regulations by December 1, 2016, incorporating instructions to hazardous waste generators implementing this requirement.

(1)

(2) Existing law requires the Secretary for Environmental Protection to implement a unified hazardous waste and hazardous materials management regulatory program. Existing law requires every county to apply to the secretary to be certified to implement the unified program and allows a city or local agency to implement the unified program as a unified program agency, or UPA. Existing law requires the Office of Emergency Services to adopt, after public hearing and consultation with the Office of the State Fire Marshal and other appropriate public entities, regulations for minimum standards for business plans and area plans, and requires all business plans and area plans to meet the standards adopted by the Office of Emergency Services.

Existing law requires a business handling hazardous materials, as specified, to establish and implement a business plan for emergency response to a release or threatened release of a hazardous material in accordance with the standards prescribed in the regulations adopted by the Office of Emergency Services. The business plan is required to contain specified information, including a site map that contains north orientation, loading areas, internal roads, adjacent streets, storm and sewer drains, access and exit points, emergency shutoffs, evacuation staging areas, hazardous material handling and storage areas, and emergency response equipment.

This bill would additionally require the site map to include additional map requirements required by the UPA pursuant to an ordinance.

Existing law makes the knowing violation of the business plan requirements a crime.

This bill, by expanding the requirements for a business plan, would impose a state-mandated local program by expanding the application of a crime.

This bill would make additional legislative findings and declarations relative to the unified program.

(2)

(3) The Aboveground Petroleum Storage Act defines, for purposes of the act, an “aboveground storage tank” as a tank that has the capacity to store 55 gallons or more of petroleum and that is substantially or totally above the surface of the ground and a tank in an underground area, as defined, *except for certain types of tanks and vessels*, as specified.

This bill would ~~revise~~ *exclude from* the definition of “aboveground storage tank” ~~to include a tank or container that has the capacity to store 55 gallons or more of petroleum, including drums, intermediate bulk containers, totes, mobile refuelers, oil-filled operational equipment, and oil-filled manufacturing equipment, and that is substantially or totally above the surface of the ground and a tank in an underground area.~~ *a tank or tank facility located on and operated by a farm that is exempt from specified federal spill prevention, control, and countermeasure requirements. The bill would revise the definition of a “tank in an underground area.” This bill would provide that a tank in an underground area that is subject to aboveground tank regulation, as specified, is not subject to regulation pursuant to laws specific to underground storage tanks.*

Existing law requires the unified program agencies (UPAs) to implement the Aboveground Petroleum Storage Act in accordance with regulations adopted by the Office of the State Fire Marshal and authorizes the Office of the State Fire Marshal to adopt these regulations.

This bill would require the Office of the State Fire Marshal to adopt these regulations.

Except for certain tank facilities located on farms, nurseries, logging sites, or construction sites, the Aboveground Petroleum Storage Act requires each owner or operator of a storage tank at a tank facility to prepare a spill prevention control and countermeasure plan and to conduct periodic inspections of the storage tank.

This bill would revise the above-described exception to the plan and inspection requirements ~~to instead~~ *additionally* require that the tank facility be operated ~~by, instead of located on,~~ *by* the farm, nursery, logging site, or construction site. The bill would require that the plan ~~address best management practices~~ *apply good engineering judgment* to prevent petroleum releases, as specified.

(3)

(4) Existing law generally regulates the storage of hazardous substances in underground storage tanks and requires underground

storage tanks that are used to store hazardous substances and that are installed after January 1, 1984, to meet certain requirements and obtain a permit from the UPA.

This bill would revise the definition of “storage” and “store” for purposes of the regulation of the storage of hazardous substances in underground storage tanks, to exempt storage that is in compliance with specified alternative laws for the regulation of hazardous materials.

This bill would make other changes to the hazardous materials laws.

(4)

(5) The existing Medical Waste Management Act regulates the disposal of medical waste. Existing law authorizes a local agency to adopt a medical waste management program to, among other things, issue medical waste registrations and permits and inspect medical waste generators and treatment facilities, and requires the local agency, if it elects to do so, to notify the department. Under existing law, if the local agency chooses not to adopt a medical waste management program or if the department withdraws its designation, the department is the enforcement agency. Under existing law, whenever the enforcement agency determines that a violation or threatened violation of the act has resulted, or is likely to result, in a release of medical waste into the environment, the agency is authorized to issue an order to the responsible person specifying a schedule for compliance or imposing an administrative penalty of not more than \$1,000 per violation.

This bill would authorize the imposition of an administrative penalty of up to \$5,000. The bill would also establish a process for the enforcement agency to set the amount of the administrative penalty and would establish a process for a person who is assessed the administrative penalty to challenge the facts of the order and the amount of the penalty, including a hearing and appeal. The bill would require that a provision of an order, except the imposition of an administrative penalty, take effect upon issuance by the enforcement agency if the enforcement agency finds that the violation or violations of law associated with that provision may pose an imminent and substantial danger to the public health or safety or the environment.

(5)

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25158.1 is added to the Health and Safety
2 Code, to read:

3 25158.1. (a) When making the quantity determinations for
4 purposes of section 66262.34 of Title 22 of Division 4.5 of the
5 California Code of Regulations, as it may be amended consistent
6 with this code, a generator shall include all hazardous waste that
7 it has generated in any month, except for universal wastes managed
8 pursuant to the requirements of Chapter 23 (commencing with
9 Section 66273.1) of Division 4.5 of Title 22 of the California Code
10 of Regulations.

11 (b) By December 1, 2016, the department shall adopt regulations
12 incorporating the instructions to hazardous waste generators in
13 subdivision (a) into its implementing regulations.

14 SECTION 1.

15 SEC. 2. Section 25270.2 of the Health and Safety Code is
16 amended to read:

17 25270.2. For purposes of this chapter, the following definitions
18 apply:

19 (a) “Aboveground storage tank” or “storage tank” means a tank
20 ~~or container~~ that has the capacity to store 55 gallons or more of
21 ~~petroleum, including, but not limited to, drums, intermediate bulk~~
22 ~~containers, totes, mobile refuelers, oil-filled operational equipment,~~
23 ~~and oil-filled manufacturing equipment as defined in Section 112.2~~
24 ~~of Title 40 of the Code of Federal Regulations and petroleum~~ that
25 is substantially or totally above the surface of the ground, except
26 that, for purposes of this chapter, “aboveground storage tank” or
27 “storage tank” includes a tank in an underground area.
28 “Aboveground storage tank” does not include any of the following:

29 (1) A pressure vessel or boiler that is subject to Part 6
30 (commencing with Section 7620) of Division 5 of the Labor Code.

31 (2) A tank containing hazardous waste or extremely hazardous
32 waste, as respectively defined in Sections 25117 and 25115, if the
33 Department of Toxic Substances Control has issued the person
34 owning or operating the tank a hazardous waste facilities permit
35 for the storage tank.

1 (3) An aboveground oil production tank that is subject to Section
2 3106 of the Public Resources Code.

3 (4) Oil-filled electrical equipment, including, but not limited
4 to, transformers, circuit breakers, or capacitors, if the oil-filled
5 electrical equipment meets either of the following conditions:

6 (A) The equipment contains less than 10,000 gallons of dielectric
7 fluid.

8 (B) The equipment contains 10,000 gallons or more of dielectric
9 fluid with PCB levels less than 50 parts per million, appropriate
10 containment or diversionary structures or equipment are employed
11 to prevent discharged oil from reaching a navigable water course,
12 and the electrical equipment is visually inspected in accordance
13 with the usual routine maintenance procedures of the owner or
14 operator.

15 (5) A tank regulated as an underground storage tank under
16 Chapter 6.7 (commencing with Section 25280) of this division and
17 Chapter 16 (commencing with Section 2610) of Division 3 of Title
18 23 of the California Code of Regulations and that does not meet
19 the definition of a tank in an underground area.

20 (6) A transportation-related tank facility, subject to the authority
21 and control of the United States Department of Transportation, as
22 defined in the Memorandum of Understanding between the
23 Secretary of Transportation and the Administrator of the United
24 States Environmental Protection Agency, as set forth in Appendix
25 A to Part 112 (commencing with Section 112.1) of Subchapter D
26 of Chapter I of Title 40 of the Code of Federal Regulations.

27 (7) A tank or tank facility *located on and* operated by a farm
28 that is exempt from the federal spill prevention, control, and
29 countermeasure rule requirements pursuant to Part 112
30 (commencing with Section 112.1) of Subchapter D of Chapter I
31 of Title 40 of the Code of Federal Regulations.

32 (b) “Board” means the State Water Resources Control Board.

33 (c) (1) “Certified Unified Program Agency” or “CUPA” means
34 the agency certified by the Secretary for Environmental Protection
35 to implement the unified program specified in Chapter 6.11
36 (commencing with Section 25404) within a jurisdiction.

37 (2) “Participating Agency” or “PA” means an agency that has
38 a written agreement with the CUPA pursuant to subdivision (d)
39 of Section 25404.3, and is approved by the secretary, to implement
40 and enforce the unified program element specified in paragraph

1 (2) of subdivision (c) of Section 25404, in accordance with Sections
2 25404.1 and 25404.2.

3 (3) (A) “Unified Program Agency” or “UPA” means the CUPA,
4 or its participating agencies to the extent that each PA has been
5 designated by the CUPA, pursuant to a written agreement, to
6 implement and enforce the unified program element specified in
7 paragraph (2) of subdivision (c) of Section 25404. The UPAs have
8 the responsibility and authority, to the extent provided by this
9 chapter and Sections 25404.1 to 25404.2, inclusive, to implement
10 and enforce the requirements of this chapter.

11 (B) After a CUPA has been certified by the secretary, the unified
12 program agency shall be the only agency authorized to enforce the
13 requirements of this chapter.

14 (C) This paragraph does not limit the authority or responsibility
15 granted to the office, the board, and the regional boards by this
16 chapter.

17 (d) “Office” means the Office of the State Fire Marshal.

18 (e) “Operator” means the person responsible for the overall
19 operation of a tank facility.

20 (f) “Owner” means the person who owns the tank facility or
21 part of the tank facility.

22 (g) “Person” means an individual, trust, firm, joint stock
23 company, corporation, including a government corporation,
24 partnership, limited liability company, or association. “Person”
25 also includes any city, county, district, the University of California,
26 the California State University, the state, any department or agency
27 thereof, and the United States, to the extent authorized by federal
28 law.

29 (h) “Petroleum” means crude oil, or a fraction thereof, that is
30 liquid at 60 degrees Fahrenheit temperature and 14.7 pounds per
31 square inch absolute pressure.

32 (i) “Regional board” means a California regional water quality
33 control board.

34 (j) “Release” means any spilling, leaking, pumping, pouring,
35 emitting, emptying, discharging, escaping, leaching, or disposing
36 into the environment.

37 (k) “Secretary” means the Secretary for Environmental
38 Protection.

1 (l) “Storage” or “store” means the containment, handling, or
2 treatment of petroleum, for a period of time, including on a
3 temporary basis.

4 (m) “Storage capacity” means the aggregate capacity of all
5 aboveground storage tanks at a tank facility. ~~The “storage capacity”~~
6 ~~of a storage tank includes the shell capacity of the storage tank. If~~
7 ~~a certain portion of the storage tank is incapable of storing~~
8 ~~petroleum due to integral design, such as mechanical equipment~~
9 ~~or other interior components, then the storage capacity is reduced~~
10 ~~to the volume the storage tank can hold.~~

11 (n) “Tank facility” means one or more aboveground storage
12 tanks, including any piping that is integral to the tanks, that contain
13 petroleum and that are used by an owner or operator at a single
14 location or site. For purposes of this chapter, a pipe is integrally
15 related to an aboveground storage tank if the pipe is connected to
16 the tank and meets any of the following:

17 (1) The pipe is within the dike or containment area.

18 (2) The pipe is between the containment area and the first flange
19 or valve outside the containment area.

20 (3) The pipe is connected to the first flange or valve on the
21 exterior of the tank, if state or federal law does not require a
22 containment area.

23 (4) The pipe is connected to a tank in an underground area.

24 (o) (l) “Tank in an underground area” means a storage tank to
25 which all of the following apply:

26 (1)

27 (A) The storage tank is located in a structure that is at least 10
28 percent below the ground surface, including, but not limited to, a
29 basement, cellar, shaft, pit, or vault.

30 (2)

31 (B) The structure in which the storage tank is located, at a
32 minimum, provides for secondary containment of the contents of
33 the tank, piping, and ancillary equipment, until cleanup occurs. *A*
34 *shop-fabricated double-walled storage tank with a mechanical or*
35 *electronic device used to detect leaks in the interstitial space meets*
36 *the requirement for secondary containment of the contents of the*
37 *tank.*

38 (3) ~~A storage tank in an underground area is not subject to~~
39 ~~Chapter 6.7 (commencing with Section 25280) if the storage tank~~
40 ~~is in compliance with the provisions of this chapter, the tank facility~~

1 owner or operator is implementing a plan to prevent and control
2 releases, and the regulations, specific to tanks in underground areas
3 and buried piping connected to tanks in underground areas, have
4 been adopted by the office pursuant to Section 25270.4.1.

5 ~~(4)~~

6 (C) The storage tank meets one or more of the following
7 conditions:

8 ~~(A)~~

9 (i) The storage tank contains petroleum to be used or previously
10 used as a lubricant or coolant in a motor engine or transmission,
11 oil-filled operational equipment, or oil-filled manufacturing
12 equipment, is situated on or above the surface of the floor, and the
13 structure in which the tank is located provides enough space for
14 direct viewing of the exterior of the tank except for the part of the
15 tank in contact with the surface of the floor.

16 ~~(B) The storage tank does not meet the conditions in~~
17 ~~subparagraph (A), (C), or (D), contains petroleum, is situated on~~
18 ~~or above the surface of the floor, and the structure in which the~~
19 ~~tank is located provides enough space for direct viewing of the~~
20 ~~exterior of the tank, except for the part of the tank in contact with~~
21 ~~the surface of the floor, and all piping connected to the tank,~~
22 ~~including any portion of a vent line, vapor recovery line, or fill~~
23 ~~pipe that is beneath the surface of the ground, and all ancillary~~
24 ~~equipment, can either be visually inspected by direct viewing or~~
25 ~~has both secondary containment and leak detection that meets the~~
26 ~~requirements of the regulations adopted by the office pursuant to~~
27 ~~Section 25270.4.1.~~

28 ~~(C)~~

29 (ii) The storage tank contains petroleum that is considered a
30 hazardous ~~waste and waste~~, complies with the hazardous waste
31 tank standards pursuant to Article 10 (commencing with Section
32 66265.190) of Chapter 15 of Title 22 of the California Code of
33 Regulations *as it may be amended*, and the tank facility has been
34 issued a unified program facility permit pursuant to Section
35 25404.2 for generation, treatment, accumulation, or storage of
36 hazardous waste.

37 ~~(D)~~

38 (iii) The storage tank contains petroleum and is used ~~for~~
39 ~~emergency systems, solely in connection with a fire pump or an~~
40 ~~emergency system, legally required standby system, or optional~~

1 *standby system as defined in the California Electrical Code*
2 *(Section 701.2 of Article 701 of, and Section 702.2 of Article 702*
3 *of Chapter 7 of Part 3 of Title 24 of the California Code of*
4 *Regulations), is situated on or above the surface of the floor, and*
5 *the structure in which the tank is located provides enough space*
6 *for direct viewing of the exterior of the tank except for the part of*
7 *the tank in contact with the surface of the floor.*

8 *(iv) The storage tank does not meet the conditions in*
9 *subparagraph (A), (B), or (C), but meets all of the following*
10 *conditions:*

11 *(I) It contains petroleum.*

12 *(II) It is situated on or above the surface of the floor.*

13 *(III) The structure in which the tank is located provides enough*
14 *space for direct viewing of the exterior of the tank, except for the*
15 *part of the tank in contact with the surface of the floor, and all*
16 *piping connected to the tank, including any portion of a vent line,*
17 *vapor recovery line, or fill pipe that is beneath the surface of the*
18 *ground, and all ancillary equipment, can either be visually*
19 *inspected by direct viewing or has both secondary containment*
20 *and leak detection that meets the requirements of the regulations*
21 *adopted by the office pursuant to Section 25270.4.1.*

22 ~~*(E) The storage tank meets one of the conditions described in*~~
23 ~~*subparagraphs (A) to (D), inclusive and meets all of the following:*~~

24 *(D) All of the following conditions apply:*

25 ~~*(i) Is*~~*The storage tank located at a facility with a storage*
26 *capacity of less than 1,320 gallons of petroleum.*

27 *(ii) The tank facility owner or operator is monitoring the tank*
28 *in compliance with recognized industry standards.*

29 *(iii) The tank facility owner or operator is implementing a *spill**
30 *prevention, control, and countermeasure plan to prevent and*
31 *control releases to the environment.*

32 *(iv) The tank facility owner or operator is complying with the*
33 *provisions of this chapter and the regulations adopted by the office.*

34 *(2) For a shop-fabricated double-walled storage tank, direct*
35 *viewing of the exterior of the tank is not required under paragraph*
36 *(1) if inspections of the interstitial space are performed or if it has*
37 *a mechanical or electronic device that will detect leaks in the*
38 *interstitial space.*

39 *(3) (A) A storage tank in an underground area is not subject*
40 *to Chapter 6.7 (commencing with Section 25280) if the storage*

1 tank is in compliance with the provisions of this chapter, the tank
2 facility owner or operator is implementing a spill prevention,
3 control, and countermeasure plan and, except as specified in
4 subparagraph (B), the regulations that apply to all new and
5 existing tanks in underground areas and buried piping connected
6 to tanks in underground areas, have been adopted by the office
7 pursuant to Section 25270.4.1.

8 (B) A storage tank meeting the description of clause (i) of
9 subparagraph (C) of paragraph (1) shall continue to be subject
10 to this chapter, and excluded from the definition of an underground
11 storage tank in Chapter 6.7 (commencing with Section 25280),
12 prior to and after the date the regulations specific to tanks in
13 underground areas have been adopted by the office.

14 (p) “Viewing” means visual inspection, and “direct viewing”
15 means, in regard to a storage tank, direct visual inspection of the
16 exterior of the tank, except for the part of the tank in contact with
17 the surface of the floor, and, *where applicable*, the entire length
18 of all piping and ancillary equipment by a person or through the
19 use of visual aids, including, but not limited to, mirrors, cameras,
20 or video equipment.

21 ~~(q) “Waters of the state” means any surface water or~~
22 ~~groundwater, including saline waters, within the boundaries of the~~
23 ~~state.~~

24 *SEC. 3. Section 25270.3 of the Health and Safety Code is*
25 *amended to read:*

26 25270.3. A tank facility is subject to this chapter if ~~the~~ *any of*
27 *the following apply:*

28 (a) *The tank facility is subject to the oil pollution prevention*
29 *regulations specified in Part 112 (commencing with Section 112.1)*
30 *of Subchapter D of Chapter I of Title 40 of the Code of Federal*
31 *Regulations or the Regulations.*

32 (b) *The tank facility has a storage capacity of 1,320 gallons or*
33 *more of petroleum.*

34 (c) *The tank facility has a storage capacity of less than 1,320*
35 *gallons of petroleum and has one or more tanks in an underground*
36 *area meeting the conditions specified in subparagraph (D) of*
37 *paragraph (1) of subdivision (o) of Section 25270.2. If this*
38 *subdivision is applicable, only tanks meeting the conditions*
39 *specified in subparagraph (D) of paragraph (1) of subdivision (o)*

1 of Section 25270.2 shall be included as storage tanks and subject
2 to this chapter.

3 ~~SEC. 2.~~

4 SEC. 4. Section 25270.4.1 of the Health and Safety Code is
5 amended to read:

6 25270.4.1. (a) The office shall adopt regulations implementing
7 this chapter. The office shall also provide interpretation of this
8 chapter to the UPAs, and oversee the implementation of this
9 chapter by the UPAs.

10 (b) The office shall establish an advisory committee that includes
11 representatives from regulated entities, appropriate trade
12 associations, fire service organizations, federal, state, and local
13 organizations, including UPAs, and other interested parties. The
14 advisory committee shall act in an advisory capacity to the office
15 in conducting its responsibilities.

16 (c) The office shall, in addition to any other requirements
17 imposed pursuant to this chapter, train UPAs, ensure consistency
18 with state law, to the maximum extent feasible, ensure consistency
19 with federal enforcement guidance issued by federal agencies
20 pursuant to subdivision (d), and support the UPAs in providing
21 outreach to regulated persons regarding compliance with current
22 local, state, and federal regulations relevant to the office's
23 obligations under this chapter.

24 (d) Any regulation adopted by the office pursuant to this section
25 shall ensure consistency with the requirements for spill prevention,
26 control, and countermeasure plans under Part 112 (commencing
27 with Section 112.1) of Subchapter D of Chapter I of Title 40 of
28 the Code of Federal Regulations, and shall include any more
29 stringent requirements necessary to implement this chapter.

30 ~~SEC. 3.~~

31 SEC. 5. Section 25270.4.5 of the Health and Safety Code is
32 amended to read:

33 25270.4.5. (a) Except as provided in subdivision (b), each
34 owner or operator of a storage tank at a tank facility subject to this
35 chapter shall prepare a spill prevention control and countermeasure
36 plan ~~prepared in accordance with~~ *applying good engineering*
37 *judgment to prevent petroleum releases using the same format*
38 *required by Part 112 (commencing with Section 112.1) of*
39 *Subchapter D of Chapter I of Title 40 of the Code of Federal*
40 ~~Regulations.~~ *Regulations, including owners and operators of tank*

1 *facilities not subject to the general provisions in Section 112.1 of*
2 *those regulations.* Each owner or operator specified in this
3 subdivision shall conduct periodic inspections of the storage tank
4 to ensure compliance with Part 112 (commencing with Section
5 112.1) of Subchapter D of Chapter I of Title 40 of the Code of
6 Federal Regulations. In implementing the spill prevention control
7 and countermeasure plan, each owner or operator specified in this
8 subdivision shall fully comply with the latest version of the
9 regulations contained in Part 112 (commencing with Section 112.1)
10 of Subchapter D of Chapter I of Title 40 of the Code of Federal
11 Regulations. ~~Tank facilities that are subject to this chapter shall~~
12 ~~prepare a spill prevention control and countermeasure plan~~
13 ~~addressing best management practices to prevent petroleum releases~~
14 ~~using the same format required by Part 112 (commencing with~~
15 ~~Section 112.1) of Subchapter D of Chapter I of Title 40 of the~~
16 ~~Code of Federal Regulations, including tank facilities not subject~~
17 ~~to the requirements of that part pursuant to that part's general~~
18 ~~applicability provisions in Section 112.1 of Title 40 of the Code~~
19 ~~of Federal Regulations.~~

20 (b) A tank facility *located on and* operated by a farm, nursery,
21 logging site, or construction site is not subject to subdivision (a)
22 if no storage tank at the location exceeds 20,000 gallons and the
23 cumulative storage capacity of the tank facility does not exceed
24 100,000 gallons. ~~However, notwithstanding paragraph (7) of~~
25 ~~subdivision (a) of~~ *Unless excluded from the definition of an*
26 *“aboveground storage tank” in Section 25270.2,* the owner or
27 operator of a tank facility exempt pursuant to this subdivision shall
28 take the following actions:

29 (1) Conduct a daily visual inspection of any storage tank storing
30 petroleum. For purposes of this section, “daily” means every day
31 that contents are added to or withdrawn from the tank, but no less
32 than five days per week. The number of days may be reduced by
33 the number of state or federal holidays that occur during the week
34 if there is no addition to, or withdrawal from, the tank on the
35 holiday. The unified program agency may reduce the frequency
36 of inspections to not less than once every three days at a tank
37 facility that is exempt pursuant to this section if the tank facility
38 is not staffed on a regular basis, provided that the inspection is
39 performed every day the facility is staffed.

1 (2) Allow the UPA to conduct a periodic inspection of the tank
2 facility.

3 (3) If the UPA determines installation of secondary containment
4 is necessary for the protection of the waters of the state, install a
5 secondary means of containment for each tank or group of tanks
6 where the secondary containment will, at a minimum, contain the
7 entire contents of the largest tank protected by the secondary
8 containment plus precipitation.

9 ~~SEC. 4.~~

10 *SEC. 6.* Section 25270.5 of the Health and Safety Code is
11 amended to read:

12 25270.5. (a) Except as provided in subdivision (b), at least
13 once every three years, the UPA shall inspect each storage tank
14 or a representative sampling of the storage tanks at each tank
15 facility that has a storage capacity of 10,000 gallons or more of
16 petroleum. The purpose of the inspection shall be to determine
17 whether the owner or operator is in compliance with the spill
18 prevention control and countermeasure plan requirements of this
19 chapter.

20 (b) The UPA may develop an alternative inspection and
21 compliance plan, subject to approval by the secretary and the office.

22 (c) An inspection conducted pursuant to this section does not
23 require the oversight of a professional engineer. The person
24 conducting the inspection shall complete and pass the initial
25 aboveground storage tank inspector training program. The
26 curriculum of the aboveground storage tank inspector training
27 program shall focus on the spill prevention control and
28 countermeasure plan provisions and safety requirements for
29 aboveground storage tank inspections.

30 ~~SEC. 5.~~

31 *SEC. 7.* Section 25270.6 of the Health and Safety Code is
32 amended to read:

33 25270.6. (a) (1) On or before January 1, 2009, and on or
34 before January 1 annually thereafter, each owner or operator of a
35 tank facility subject to this chapter shall file with the statewide
36 information management system, a tank facility statement that
37 shall identify the name and address of the tank facility, a contact
38 person for the tank facility, the total storage capacity of the tank
39 facility, and the location and contents of each petroleum storage
40 tank that exceeds 10,000 gallons in *storage* capacity. A copy of a

1 statement submitted previously pursuant to this section may be
2 submitted in lieu of a new tank facility statement if no new or used
3 storage tanks have been added to the facility or if no significant
4 modifications have been made. For purposes of this section, a
5 significant modification includes, but is not limited to, altering
6 existing storage tanks or changing spill prevention or containment
7 methods.

8 (2) Notwithstanding paragraph (1), an owner or operator of a
9 tank facility that submits a business plan, as defined in subdivision
10 (d) of Section 25501, to the statewide information management
11 system and that complies with Sections 25503, 25505, 25505.1,
12 25507, 25507.2, 25508, ~~and 25508.1, satisfies and 25508.2 meets~~
13 the requirement in paragraph (1) to file a tank facility statement.

14 (b) Each year, commencing in calendar year 2010, each owner
15 or operator of a tank facility who is subject to the requirements of
16 subdivision (a) shall pay a fee to the UPA, on or before a date
17 specified by the UPA. The governing body of the UPA shall
18 establish a fee, as part of the single fee system implemented
19 pursuant to Section 25404.5, at a level sufficient to pay the
20 necessary and reasonable costs incurred by the UPA in
21 administering this chapter, including, but not limited to,
22 inspections, enforcement, and administrative costs. The UPA shall
23 also implement the fee accountability program established pursuant
24 to subdivision (c) of Section 25404.5 and the regulations adopted
25 to implement that program.

26 ~~SEC. 6:~~

27 *SEC. 8.* Section 25281 of the Health and Safety Code is
28 amended to read:

29 25281. For purposes of this chapter and unless otherwise
30 expressly provided, the following definitions apply:

31 (a) “Automatic line leak detector” means any method of leak
32 detection, as determined in regulations adopted by the board, that
33 alerts the owner or operator of an underground storage tank to the
34 presence of a leak. “Automatic line leak detector” includes, but is
35 not limited to, any device or mechanism that alerts the owner or
36 operator of an underground storage tank to the presence of a leak
37 by restricting or shutting off the flow of a hazardous substance
38 through piping, or by triggering an audible or visual alarm, and
39 that detects leaks of three gallons or more per hour at 10 pounds
40 per square inch line pressure within one hour.

1 (b) “Board” means the State Water Resources Control Board.
2 “Regional board” means a California regional water quality control
3 board.

4 (c) “Compatible” means the ability of two or more substances
5 to maintain their respective physical and chemical properties upon
6 contact with one another for the design life of the tank system
7 under conditions likely to be encountered in the tank system.

8 (d) (1) “Certified Unified Program Agency” or “CUPA” means
9 the agency certified by the Secretary for Environmental Protection
10 to implement the unified program specified in Chapter 6.11
11 (commencing with Section 25404) within a jurisdiction.

12 (2) “Participating Agency” or “PA” means an agency that has
13 a written agreement with the CUPA pursuant to subdivision (d)
14 of Section 25404.3, and is approved by the secretary to implement
15 or enforce the unified program element specified in paragraph (3)
16 of subdivision (c) of Section 25404, in accordance with Sections
17 25404.1 and 25404.2.

18 (3) “Unified Program Agency” or “UPA” means the CUPA, or
19 its participating agencies to the extent each PA has been designated
20 by the CUPA, pursuant to a written agreement, to implement or
21 enforce the unified program element specified in paragraph (3) of
22 subdivision (c) of Section 25404. For purposes of this chapter, a
23 UPA has the responsibility and authority, to the extent provided
24 by this chapter and Sections 25404.1 to 25404.2, inclusive, to
25 implement and enforce only those requirements of this chapter
26 listed in paragraph (3) of subdivision (c) of Section 25404 and the
27 regulations adopted to implement those requirements. Except as
28 provided in Section 25296.09, after a CUPA has been certified by
29 the secretary, the UPA shall be the only local agency authorized
30 to enforce the requirements of this chapter listed in paragraph (3)
31 of subdivision (c) of Section 25404 within the jurisdiction of the
32 CUPA. This paragraph shall not be construed to limit the authority
33 or responsibility granted to the board and the regional boards by
34 this chapter to implement and enforce this chapter and the
35 regulations adopted pursuant to this chapter.

36 (e) “Department” means the Department of Toxic Substances
37 Control.

38 (f) “Facility” means any one, or combination of, underground
39 storage tanks used by a single business entity at a single location
40 or site.

1 (g) “Federal act” means Subchapter IX (commencing with
2 Section 6991) of Chapter 82 of Title 42 of the United States Code,
3 as added by the Hazardous and Solid Waste Amendments of 1984
4 (Public Law 98-616), or as it may subsequently be amended or
5 supplemented.

6 (h) “Hazardous substance” means either of the following:

7 (1) All of the following liquid and solid substances, unless the
8 department, in consultation with the board, determines that the
9 substance could not adversely affect the quality of the waters of
10 the state:

11 (A) Substances on the list prepared by the Director of Industrial
12 Relations pursuant to Section 6382 of the Labor Code.

13 (B) Hazardous substances, as defined in Section 25316.

14 (C) Any substance or material that is classified by the National
15 Fire Protection Association (NFPA) as a flammable liquid, a class
16 II combustible liquid, or a class III-A combustible liquid.

17 (2) Any regulated substance, as defined in subsection (7) of
18 Section 6991 of Title 42 of the United States Code, as that section
19 reads on January 1, 2012, or as it may subsequently be amended
20 or supplemented.

21 (i) “Local agency” means one of the following, as specified in
22 subdivision (b) of Section 25283:

23 (1) The unified program agency.

24 (2) Before July 1, 2013, a city or county.

25 (3) On and after July 1, 2013, a city or county certified by the
26 board to implement the local oversight program pursuant to Section
27 25297.01.

28 (j) “Operator” means any person in control of, or having daily
29 responsibility for, the daily operation of an underground storage
30 tank system.

31 (k) “Owner” means the owner of an underground storage tank.

32 (l) “Person” means an individual, trust, firm, joint stock
33 company, corporation, including a government corporation,
34 partnership, limited liability company, or association. “Person”
35 also includes any city, county, district, the state, another state of
36 the United States, any department or agency of this state or another
37 state, or the United States to the extent authorized by federal law.

38 (m) “Pipe” means any pipeline or system of pipelines that is
39 used in connection with the storage of hazardous substances and
40 that is not intended to transport hazardous substances in interstate

1 or intrastate commerce or to transfer hazardous materials in bulk
2 to or from a marine vessel.

3 (n) “Primary containment” means the first level of containment,
4 such as the portion of a tank that comes into immediate contact on
5 its inner surface with the hazardous substance being contained.

6 (o) “Product tight” means impervious to the substance that is
7 contained, or is to be contained, so as to prevent the seepage of
8 the substance from the containment.

9 (p) “Release” means any spilling, leaking, emitting, discharging,
10 escaping, leaching, or disposing from an underground storage tank
11 into or on the waters of the state, the land, or the subsurface soils.

12 (q) “Secondary containment” means the level of containment
13 external to, and separate from, the primary containment.

14 (r) “Single walled” means construction with walls made of only
15 one thickness of material. For the purposes of this chapter,
16 laminated, coated, or clad materials are considered single walled.

17 (s) “Special inspector” means a professional engineer, registered
18 pursuant to Chapter 7 (commencing with Section 6700) of Division
19 3 of the Business and Professions Code, who is qualified to attest,
20 at a minimum, to structural soundness, seismic safety, the
21 compatibility of construction materials with contents, cathodic
22 protection, and the mechanical compatibility of the structural
23 elements of underground storage tanks.

24 (t) (1) “Storage” or “store” means the containment, handling,
25 or treatment of hazardous substances, either on a temporary basis
26 or for a period of years.

27 (2) “Storage” or “store” does not include the storage of
28 hazardous wastes in an underground storage tank if the person
29 operating the tank has been issued a hazardous waste facilities
30 permit by the department pursuant to Section 25200 or 25201.6
31 or granted interim status under Section 25200.5.

32 (3) “Storage” or “store” does not include the storage of
33 hazardous wastes in an underground storage tank if ~~the~~ *all of the*
34 *following apply:*

35 (A) *The facility has been issued a unified program facility permit*
36 *pursuant to Section 25404.2 for generation, treatment,*
37 *accumulation, or storage of hazardous waste in*~~an~~ *a tank.*

38 (B) *The tank is located in an underground area, as defined in*
39 *Section 280.12 of Title 40 of the Code of Federal Regulations,* ~~that~~
40 *is Regulations.*

1 (C) *The tank is* subject to Chapter 6.67 (commencing with
2 Section ~~25270~~ and 25270).

3 (D) *The tank* complies with the hazardous waste tank standards
4 pursuant to Article 10 (commencing with Section 66265.190) of
5 Chapter 15 of Title 22 of the California Code of Regulations.

6 (4) “Storage” or “store” does not include the storage of
7 hazardous wastes in an underground storage tank if all of the
8 following apply:

9 (A) The facility has been issued a unified program facility permit
10 pursuant to Section 25404.2 for generation, treatment,
11 accumulation, or storage of hazardous waste in a tank.

12 (B) The tank is located in a structure that is at least 10 percent
13 below the ground surface, including, but not limited to, a basement,
14 cellar, shaft, pit, or vault.

15 (C) The structure in which the tank is located, at a minimum,
16 provides for secondary containment of the contents of the tank,
17 piping, and ancillary equipment, until cleanup occurs.

18 (D) The tank complies with the hazardous waste tank standards
19 pursuant to Article 10 (commencing with Section 66265.190) of
20 Chapter 15 of Title 22 of the California Code of Regulations.

21 (u) “Tank” means a stationary device designed to contain an
22 accumulation of hazardous substances which is constructed
23 primarily of nonearthen materials, including, but not limited to,
24 wood, concrete, steel, or plastic that provides structural support.

25 (v) “Tank integrity test” means a test method capable of
26 detecting an unauthorized release from an underground storage
27 tank consistent with the minimum standards adopted by the board.

28 (w) “Tank tester” means an individual who performs tank
29 integrity tests on underground storage tanks.

30 (x) “Unauthorized release” means any release of any hazardous
31 substance that does not conform to this chapter, including an
32 unauthorized release specified in Section 25295.5.

33 (y) (1) “Underground storage tank” means any one or
34 combination of tanks, including pipes connected thereto, that is
35 used for the storage of hazardous substances and that is
36 substantially or totally beneath the surface of the ground.
37 “Underground storage tank” does not include any of the following:

38 (A) A tank with a capacity of 1,100 gallons or less that is located
39 on a farm and that stores motor vehicle fuel used primarily for
40 agricultural purposes and not for resale.

1 (B) A tank that is located on a farm or at the residence of a
2 person, that has a capacity of 1,100 gallons or less, and that stores
3 home heating oil for consumptive use on the premises where stored.

4 (C) Structures, such as sumps, separators, storm drains, catch
5 basins, oil field gathering lines, refinery pipelines, lagoons,
6 evaporation ponds, well cellars, separation sumps, and lined and
7 unlined pits, sumps, and lagoons. A sump that is a part of a
8 monitoring system required under Section 25290.1, 25290.2,
9 25291, or 25292 and sumps or other structures defined as
10 underground storage tanks under the federal act are not exempted
11 by this subparagraph.

12 (D) A tank holding hydraulic fluid for a closed loop mechanical
13 system that uses compressed air or hydraulic fluid to operate lifts,
14 elevators, and other similar devices.

15 (E) A tank in an underground area, as defined in Section
16 25270.2, and associated piping, that is subject to Chapter 6.67
17 (commencing with Section 25270).

18 (2) Structures identified in subparagraphs (C) and (D) of
19 paragraph (1) may be regulated by the board and any regional
20 board pursuant to the Porter-Cologne Water Quality Control Act
21 (Division 7 (commencing with Section 13000) of the Water Code)
22 to ensure that they do not pose a threat to water quality.

23 (z) “Underground tank system” or “tank system” means an
24 underground storage tank, connected piping, ancillary equipment,
25 and containment system, if any.

26 (aa) (1) “Unified program facility” means all contiguous land
27 and structures, other appurtenances, and improvements on the land
28 that are subject to the requirements of paragraph (3) of subdivision
29 (c) of Section 25404.

30 (2) “Unified program facility permit” means a permit issued
31 pursuant to Chapter 6.11 (commencing with Section 25404), and
32 that encompasses the permitting requirements of Section 25284.

33 (3) “Permit” means a permit issued pursuant to Section 25284
34 or a unified program facility permit as defined in paragraph (2).

35 ~~SEC. 7.~~

36 *SEC. 9.* Section 25404 of the Health and Safety Code is
37 amended to read:

38 25404. (a) For purposes of this chapter, the following terms
39 shall have the following meanings:

1 (1) (A) “Certified Unified Program Agency” or “CUPA” means
2 the agency certified by the secretary to implement the unified
3 program specified in this chapter within a jurisdiction.

4 (B) “Participating Agency” or “PA” means a state or local
5 agency that has a written agreement with the CUPA pursuant to
6 subdivision (d) of Section 25404.3, and is approved by the
7 secretary, to implement or enforce one or more of the unified
8 program elements specified in subdivision (c), in accordance with
9 Sections 25404.1 and 25404.2.

10 (C) “Unified Program Agency” or “UPA” means the CUPA, or
11 its participating agencies to the extent each PA has been designated
12 by the CUPA, pursuant to a written agreement, to implement or
13 enforce a particular unified program element specified in
14 subdivision (c). The UPAs have the responsibility and authority
15 to implement and enforce the requirements listed in subdivision
16 (c), and the regulations adopted to implement the requirements
17 listed in subdivision (c), to the extent provided by Chapter 6.5
18 (commencing with Section 25100), Chapter 6.67 (commencing
19 with Section 25270), Chapter 6.7 (commencing with Section
20 25280), Chapter 6.95 (commencing with Section 25500), and
21 Sections 25404.1 to 25404.2, inclusive. After a CUPA has been
22 certified by the secretary, the unified program agencies and the
23 state agencies carrying out responsibilities under this chapter shall
24 be the only agencies authorized to enforce the requirements listed
25 in subdivision (c) within the jurisdiction of the CUPA.

26 (2) “Department” means the Department of Toxic Substances
27 Control.

28 (3) “Minor violation” means the failure of a person to comply
29 with a requirement or condition of an applicable law, regulation,
30 permit, information request, order, variance, or other requirement,
31 whether procedural or substantive, of the unified program that the
32 UPA is authorized to implement or enforce pursuant to this chapter,
33 and that does not otherwise include any of the following:

34 (A) A violation that results in injury to persons or property, or
35 that presents a significant threat to human health or the
36 environment.

37 (B) A knowing, willful, or intentional violation.

38 (C) A violation that is a chronic violation, or that is committed
39 by a recalcitrant violator. In determining whether a violation is
40 chronic or a violator is recalcitrant, the UPA shall consider whether

1 there is evidence indicating that the violator has engaged in a
2 pattern of neglect or disregard with respect to applicable regulatory
3 requirements.

4 (D) A violation that results in an emergency response from a
5 public safety agency.

6 (E) A violation that enables the violator to benefit economically
7 from the noncompliance, either by reduced costs or competitive
8 advantage.

9 (F) A class I violation as provided in Section 25117.6.

10 (G) A class II violation committed by a chronic or a recalcitrant
11 violator, as provided in Section 25117.6.

12 (H) A violation that hinders the ability of the UPA to determine
13 compliance with any other applicable local, state, or federal rule,
14 regulation, information request, order, variance, permit, or other
15 requirement.

16 (4) “Secretary” means the Secretary for Environmental
17 Protection.

18 (5) “Unified program facility” means all contiguous land and
19 structures, other appurtenances, and improvements on the land
20 that are subject to the requirements listed in subdivision (c).

21 (6) “Unified program facility permit” means a permit issued
22 pursuant to this chapter. For the purposes of this chapter, a unified
23 program facility permit encompasses the permitting requirements
24 of Section 25284, and permit or authorization requirements under
25 a local ordinance or regulation relating to the generation or
26 handling of hazardous waste or hazardous materials, but does not
27 encompass the permitting requirements of a local ordinance that
28 incorporates provisions of the California Fire Code or the
29 California Building Code.

30 (b) The secretary shall adopt implementing regulations and
31 implement a unified hazardous waste and hazardous materials
32 management regulatory program, which shall be known as the
33 unified program, after holding an appropriate number of public
34 hearings throughout the state. The unified program shall be
35 developed in close consultation with the director, the Secretary of
36 California Emergency Management, the State Fire Marshal, the
37 executive officers and chairpersons of the State Water Resources
38 Control Board and the California regional water quality control
39 boards, the local health officers, local fire services, and other
40 appropriate officers of interested local agencies, and affected

1 businesses and interested members of the public, including
2 environmental organizations.

3 (c) The unified program shall consolidate the administration of
4 the following requirements and, to the maximum extent feasible
5 within statutory constraints, shall ensure the coordination and
6 consistency of any regulations adopted pursuant to those
7 requirements:

8 (1) (A) Except as provided in subparagraphs (B) and (C), the
9 requirements of Chapter 6.5 (commencing with Section 25100),
10 and the regulations adopted by the department pursuant thereto,
11 that are applicable to all of the following:

12 (i) Hazardous waste generators, persons operating pursuant to
13 a permit-by-rule, conditional authorization, or conditional
14 exemption, pursuant to Chapter 6.5 (commencing with Section
15 25100) or the regulations adopted by the department.

16 (ii) Persons managing perchlorate materials.

17 (iii) Persons subject to Article 10.1 (commencing with Section
18 25211) of Chapter 6.5.

19 (iv) Persons operating a collection location that has been
20 established under an architectural paint stewardship plan approved
21 by the Department of Resources Recycling and Recovery pursuant
22 to the architectural paint recovery program established pursuant
23 to Chapter 5 (commencing with Section 48700) of Part 7 of
24 Division 30 of the Public Resources Code.

25 (v) On and before December 31, 2019, a transfer facility, as
26 defined in paragraph (3) of subdivision (a) of Section 25123.3,
27 that is operated by a door-to-door household hazardous waste
28 collection program or household hazardous waste residential pickup
29 service, as defined in subdivision (c) of Section 25218.1. On and
30 after January 1, 2020, the unified program shall not include a
31 transfer facility operated by a door-to-door household hazardous
32 waste collection program.

33 (vi) Persons who receive used oil from consumers pursuant to
34 Section 25250.11.

35 (B) The unified program shall not include the requirements of
36 paragraph (3) of subdivision (c) of Section 25200.3, the
37 requirements of Sections 25200.10 and 25200.14, and the authority
38 to issue an order under Sections 25187 and 25187.1, with regard
39 to those portions of a unified program facility that are subject to
40 one of the following:

- 1 (i) A corrective action order issued by the department pursuant
2 to Section 25187.
- 3 (ii) An order issued by the department pursuant to Chapter 6.8
4 (commencing with Section 25300) or former Chapter 6.85
5 (commencing with Section 25396).
- 6 (iii) A remedial action plan approved pursuant to Chapter 6.8
7 (commencing with Section 25300) or former Chapter 6.85
8 (commencing with Section 25396).
- 9 (iv) A cleanup and abatement order issued by a California
10 regional water quality control board pursuant to Section 13304 of
11 the Water Code, to the extent that the cleanup and abatement order
12 addresses the requirements of the applicable section or sections
13 listed in this subparagraph.
- 14 (v) Corrective action required under subsection (u) of Section
15 6924 of Title 42 of the United States Code or subsection (h) of
16 Section 6928 of Title 42 of the United States Code.
- 17 (vi) An environmental assessment pursuant to Section 25200.14
18 or a corrective action pursuant to Section 25200.10 or paragraph
19 (3) of subdivision (c) of Section 25200.3, that is being overseen
20 by the department.
- 21 (C) The unified program shall not include the requirements of
22 Chapter 6.5 (commencing with Section 25100), and the regulations
23 adopted by the department pursuant thereto, applicable to persons
24 operating transportable treatment units, except that any required
25 notice regarding transportable treatment units shall also be provided
26 to the CUPAs.
- 27 (2) The requirements of Chapter 6.67 (commencing with Section
28 25270) concerning aboveground storage tanks.
- 29 (3) (A) Except as provided in subparagraphs (B) and (C), the
30 requirements of Chapter 6.7 (commencing with Section 25280)
31 concerning underground storage tanks and the requirements of any
32 underground storage tank ordinance adopted by a city or county.
- 33 (B) The unified program shall not include the responsibilities
34 assigned to the State Water Resources Control Board pursuant to
35 Section 25297.1.
- 36 (C) The unified program shall not include the corrective action
37 requirements of Sections 25296.10 to 25296.40, inclusive.
- 38 (4) The requirements of Article 1 (commencing with Section
39 25500) of Chapter 6.95 concerning hazardous material release
40 response plans and inventories.

1 (5) The requirements of Article 2 (commencing with Section
2 25531) of Chapter 6.95, concerning the accidental release
3 prevention program.

4 (6) The requirements of Sections ~~2701.5.1 and 2701.5.2 for the~~
5 *hazardous materials plan and hazardous materials inventory*
6 *statement* of the California Fire Code, as adopted by the State Fire
7 Marshal pursuant to Section ~~13143.9 concerning hazardous material~~
8 ~~management plans and inventories. 13143.9.~~

9 (d) To the maximum extent feasible within statutory constraints,
10 the secretary shall consolidate, coordinate, and make consistent
11 these requirements of the unified program with other requirements
12 imposed by other federal, state, regional, or local agencies upon
13 facilities regulated by the unified program.

14 (e) (1) The secretary shall establish standards applicable to
15 CUPAs, participating agencies, state agencies, and businesses
16 specifying the data to be collected and submitted by unified
17 program agencies in administering the programs listed in
18 subdivision (c).

19 (2) (A) The secretary shall establish a statewide information
20 management system capable of receiving all data collected by the
21 unified program agencies and reported by regulated businesses
22 pursuant to this subdivision, in a manner that is most cost efficient
23 and effective for both the regulated businesses and state and local
24 agencies. The secretary shall prescribe an XML or other compatible
25 Web-based format for the transfer of data from CUPAs and
26 regulated businesses and make all nonconfidential data available
27 on the Internet.

28 (B) The secretary shall establish milestones to measure the
29 implementation of the statewide information management system
30 and shall provide periodic status updates to interested parties.

31 (3) (A) (i) Except as provided in subparagraph (B), in addition
32 to any other funding that becomes available, the secretary shall
33 increase the oversight surcharge provided for in subdivision (b)
34 of Section 25404.5 by an amount necessary to meet the
35 requirements of this subdivision for a period of three years, to
36 establish the statewide information management system, consistent
37 with paragraph (2). The increase in the oversight surcharge shall
38 not exceed twenty-five dollars (\$25) in any one year of the
39 three-year period. The secretary shall thereafter maintain the
40 statewide information management system, funded by the

1 assessment the secretary is authorized to impose pursuant to
2 Section 25404.5.

3 (ii) No less than 75 percent of the additional funding raised
4 pursuant to clause (i) shall be provided to CUPAs and PAs through
5 grant funds or statewide contract services, in the amounts
6 determined by the secretary to assist these local agencies in meeting
7 these information management system requirements.

8 (B) A facility that is owned or operated by the federal
9 government and that is subject to the unified program shall pay
10 the surcharge required by this paragraph to the extent authorized
11 by federal law.

12 (C) The secretary, or one or more of the boards, departments,
13 or offices within the California Environmental Protection Agency,
14 shall seek available federal funding for purposes of implementing
15 this subdivision.

16 (4) No later than three years after the statewide information
17 management system is established, each CUPA, PA, and regulated
18 business shall report program data electronically. The secretary
19 shall work with the CUPAs to develop a phased in schedule for
20 the electronic collection and submittal of information to be included
21 in the statewide information management system, giving first
22 priority to information relating to those chemicals determined by
23 the secretary to be of greatest concern. The secretary, in making
24 this determination shall consult with the CUPAs, the California
25 Emergency Management Agency, the State Fire Marshal, and the
26 boards, departments, and offices within the California
27 Environmental Protection Agency.

28 (5) The secretary, in collaboration with the CUPAs, shall provide
29 technical assistance to regulated businesses to comply with the
30 electronic reporting requirements and may expend funds identified
31 in clause (i) of subparagraph (A) of paragraph (3) for that purpose.

32 ~~SEC. 8. Section 25500 of the Health and Safety Code is~~
33 ~~amended to read:~~

34 ~~25500. (a) The Legislature declares that, in order to protect~~
35 ~~the public health and safety and the environment, it is necessary~~
36 ~~to establish business and area plans relating to the handling and~~
37 ~~release or threatened release of hazardous materials. The~~
38 ~~establishment of a statewide environmental reporting system for~~
39 ~~these plans is a statewide requirement. Basic information on the~~
40 ~~location, type, quantity, and health risks of hazardous materials~~

1 handled, used, stored, or disposed of in the state, which could be
2 accidentally released into the environment, is required to be
3 submitted to firefighters, health officials, planners, public safety
4 officers, health care providers, regulatory agencies, and other
5 interested persons. The information provided by business and area
6 plans is necessary in order to prevent or mitigate the damage to
7 the health and safety of persons and the environment from the
8 release or threatened release of hazardous materials into the
9 workplace and environment.

10 (b) ~~The Legislature further finds and declares that this article~~
11 ~~and Article 2 (commencing with Section 25531) do not occupy~~
12 ~~the whole area of regulating the inventorying of hazardous~~
13 ~~materials and the preparation of hazardous materials response plans~~
14 ~~by businesses, and the Legislature does not intend to preempt any~~
15 ~~local actions, ordinances, or regulations that impose additional or~~
16 ~~more stringent requirements on businesses that handle hazardous~~
17 ~~materials. Thus, in enacting this article and Article 2 (commencing~~
18 ~~with Section 25531), it is not the intent of the Legislature to~~
19 ~~preempt or otherwise nullify any other statute or local ordinance~~
20 ~~containing the same or greater standards and protections.~~

21 (c) ~~The Legislature further finds and declares that the owners~~
22 ~~and operators of stationary sources producing, processing, handling,~~
23 ~~or storing hazardous materials have a general duty, in the same~~
24 ~~manner and to the same extent as is required by Section 654 of~~
25 ~~Title 29 of the United States Code, to identify hazards that may~~
26 ~~result from releases using appropriate hazard assessment~~
27 ~~techniques, to design and maintain a safe facility taking those steps~~
28 ~~as are necessary to prevent releases, and to minimize the~~
29 ~~consequences of accidental releases that do occur.~~

30 ~~SEC. 9.~~

31 *SEC. 10.* Section 25505 of the Health and Safety Code is
32 amended to read:

33 25505. (a) A business plan shall contain all of the following
34 information:

35 (1) The inventory of information required by this article and
36 additional information the governing body of the unified program
37 agency finds necessary to protect the health and safety of persons,
38 property, or the environment. Locally required information shall
39 be adopted by local ordinance and shall be subject to trade secret
40 protection specified in Section 25512. The unified program agency

1 shall notify the secretary within 30 days after those requirements
2 are adopted.

3 (2) A site map that contains north orientation, loading areas,
4 internal roads, adjacent streets, storm and sewer drains, access and
5 exit points, emergency shutoffs, evacuation staging areas,
6 hazardous material handling and storage areas, emergency response
7 equipment, and additional map requirements the governing body
8 of the unified program agency finds necessary. Any locally required
9 additional map requirements shall be adopted by local ordinance
10 ~~and the ordinance~~. *This ordinance and related public processes*
11 *are subject to the limitations on the disclosure of hazardous*
12 *material location information specified in subdivision (b) of Section*
13 *25509. The unified program agency shall notify the secretary both*
14 *before publishing a proposed ordinance to require additional map*
15 *requirements and within 30 days after those requirements are*
16 *adopted. A site map shall be updated to include the additional*
17 *information required pursuant to the local ordinance no later than*
18 *one year after adoption of the local ordinance.*

19 (3) Emergency response plans and procedures in the event of a
20 release or threatened release of a hazardous material, including,
21 but not limited to, all of the following:

22 (A) Immediate notification contacts to the appropriate local
23 emergency response personnel and to the unified program agency.

24 (B) Procedures for the mitigation of a release or threatened
25 release to minimize any potential harm or damage to persons,
26 property, or the environment.

27 (C) Evacuation plans and procedures, including immediate
28 notice, for the business site.

29 (4) Training for all new employees and annual training,
30 including refresher courses, for all employees in safety procedures
31 in the event of a release or threatened release of a hazardous
32 material, including, but not limited to, familiarity with the plans
33 and procedures specified in paragraph (3). These training programs
34 may take into consideration the position of each employee. This
35 training shall be documented electronically or by hard copy and
36 shall be made available for a minimum of three years.

37 (b) A business required to file a pipeline operations contingency
38 plan in accordance with the Elder California Pipeline Safety Act
39 of 1981 (Chapter 5.5 (commencing with Section 51010) of Part 1
40 of Division 1 of Title 5 of the Government Code) and the

1 regulations of the Department of Transportation, found in Part 195
2 (commencing with Section 195.0) of Subchapter D of Chapter I
3 of Subtitle B of Title 49 of the Code of Federal Regulations, may
4 file a copy of those plans with the unified program agency instead
5 of filing an emergency response plan specified in paragraph (3)
6 of subdivision (a).

7 (c) The emergency response plans and procedures, the inventory
8 of information required by this article, and the site map required
9 by this section shall be readily available to personnel of the
10 business or the unified program facility with responsibilities for
11 emergency response or training pursuant to this section.

12 ~~SEC. 10.~~

13 *SEC. 11.* Section 25507 of the Health and Safety Code is
14 amended to read:

15 25507. (a) Except as provided in this article, a business shall
16 establish and implement a business plan for emergency response
17 to a release or threatened release of a hazardous material in
18 accordance with the standards prescribed in the regulations adopted
19 pursuant to Section 25503 ~~for any business that~~ *if the business*
20 meets any of the following conditions at a *any* unified program
21 facility:

22 (1) (A) ~~The facility~~ *It* handles a hazardous material or a mixture
23 containing a hazardous material that has a quantity at any one time
24 during the reporting year that is equal to, or greater than, 55 gallons
25 for materials that are liquids, 500 pounds for solids, or 200 cubic
26 feet for compressed gas, as defined in subdivision (i) of Section
27 25501. The physical state and quantity present of mixtures shall
28 be determined by the physical state of the mixture as a whole, not
29 individual components, at standard temperature and pressure.

30 (B) For the purpose of this section, for compressed gases, if a
31 hazardous material or mixture is determined to exceed threshold
32 quantities at standard temperature and pressure, it shall be reported
33 in the physical state at which it is stored. If the material is an
34 extremely hazardous substance, as defined in Section 355.61 of
35 Title 40 of the Code of Federal Regulations, all amounts shall be
36 reported in pounds.

37 (2) ~~The facility~~ *It* is required to submit chemical inventory
38 information pursuant to Section 11022 of Title 42 of the United
39 States Code.

1 (3) ~~The facility~~*It* handles at any one time during the reporting
2 year an amount of a hazardous material that is equal to, or greater
3 than the threshold planning quantity, under both of the following
4 conditions:

5 (A) The hazardous material is an extremely hazardous substance,
6 as defined in Section 355.61 of Title 40 of the Code of Federal
7 Regulations.

8 (B) The threshold planning quantity for that extremely hazardous
9 substance listed in Appendices A and B of Part 355 (commencing
10 with Section 355.1) of Subchapter J of Chapter I of Title 40 of the
11 Code of Federal Regulations is less than 500 pounds.

12 (4) (A) ~~Except as provided in subparagraph (B), the business~~
13 *It* handles at any one time during the reporting year a total weight
14 of 5,000 pounds for solids or a total volume of 550 gallons for
15 liquids, if the hazardous material is a solid or liquid substance that
16 is classified as a hazard for purposes of Section 5194 of Title 8 of
17 the California Code of Regulations solely as an irritant or ~~sensitizer.~~
18 *sensitizer, except as provided in subparagraph (B).*

19 (B) If the hazardous material handled by the facility is a paint
20 that will be recycled or otherwise managed under an architectural
21 paint recovery program approved by the Department of Resources
22 ~~Reeyeling and Recovery and Recycling~~ pursuant to Chapter 5
23 (commencing with Section 48700) of Part 7 of Division 30 of the
24 Public Resources Code, the business is required to establish and
25 implement a business plan only if the business handles at any one
26 time during the reporting year a total weight of 10,000 pounds of
27 solid hazardous materials or a total volume of 1,000 gallons of
28 liquid hazardous materials.

29 (5) ~~The facility~~*It* handles at any one time during the reporting
30 year cryogenic refrigerated, or compressed gas in a quantity of
31 1,000 cubic feet or more at standard temperature and pressure, if
32 the gas is any of the following:

33 (A) Classified as a hazard for the purposes of Section 5194 of
34 Title 8 of the California Code of Regulations only for hazards due
35 to simple asphyxiation or the release of pressure.

36 (B) Oxygen, nitrogen, and nitrous oxide ordinarily maintained
37 by a physician, dentist, podiatrist, veterinarian, pharmacist, or
38 emergency medical service provider at his or her place of business.

39 (C) Carbon dioxide.

1 (D) Nonflammable refrigerant gases, as defined in the California
2 Fire Code, that are used in refrigeration systems.

3 (E) Gases used in closed fire suppression systems.

4 (6) ~~The facility~~*It* handles a radioactive material at any one time
5 during the reporting year in quantities for which an emergency
6 plan is required to be considered pursuant to Schedule C (Section
7 30.72) of Part 30 (commencing with Section 30.1), Part 40
8 (commencing with Section 40.1), or Part 70 (commencing with
9 Section 70.1), of Chapter 1 of Title 10 of the Code of Federal
10 Regulations, or pursuant to any regulations adopted by the state
11 in accordance with those regulations.

12 (7) ~~The facility~~*It* handles perchlorate material, as defined in
13 subdivision (c) of Section 25210.5, in a quantity at any one time
14 during the reporting year that is equal to, or greater than, the
15 thresholds listed in paragraph (1).

16 (b) The following hazardous materials are exempt from the
17 requirements of this section:

18 (1) Refrigerant gases, other than ammonia or flammable gas in
19 a closed cooling system, that are used for comfort or space cooling
20 for computer rooms.

21 (2) Compressed air in cylinders, bottles, and tanks used by fire
22 departments and other emergency response organizations for the
23 purpose of emergency response and safety.

24 (3) (A) Lubricating oil, if the total volume of each type of
25 lubricating oil handled at a facility does not exceed 55 gallons and
26 the total volume of all types of lubricating oil handled at that
27 facility does not exceed 275 gallons, at any one time.

28 (B) For purposes of this paragraph, “lubricating oil” means oil
29 intended for use in an internal combustion crankcase, or the
30 transmission, gearbox, differential, or hydraulic system of an
31 automobile, bus, truck, vessel, airplane, heavy equipment, or other
32 machinery powered by an internal combustion or electric powered
33 engine. “Lubricating oil” does not include used oil, as defined in
34 subdivision (a) of Section 25250.1.

35 (4) Both of the following, if the aggregate storage capacity of
36 oil at the facility is less than 1,320 ~~gallons~~: *gallons and a spill*
37 *prevention countermeasure and control plan is not required*
38 *pursuant to Part 112 (commencing with Section 112.1) of*
39 *Subchapter D of Chapter 1 of Title 40 of the Code of Federal*
40 *Regulations.*

1 (A) Fluid in a hydraulic system.

2 (B) Oil-filled electrical equipment that is not contiguous to an
3 electric facility.

4 (5) Hazardous material contained solely in a consumer product,
5 handled at, and found in, a retail establishment and intended for
6 sale to, and for the use by, the public. The exemption provided for
7 in this paragraph shall not apply to a consumer product handled
8 at the facility which manufactures that product, or a separate
9 warehouse or distribution center of that facility, or where a product
10 is dispensed on the retail premises.

11 (6) Propane that is for on-premises use, storage, or both, in an
12 amount not to exceed 500 gallons, that is for the sole purpose of
13 cooking, heating employee work areas, and heating water within
14 that facility, unless the unified program agency finds, and provides
15 notice to the ~~facility~~ *business* handling the propane, that the
16 handling of the on-premises propane requires the submission of a
17 business plan, or any portion of a business plan, in response to
18 public health, safety, or environmental concerns.

19 (c) In addition to the authority specified in subdivision (e), the
20 governing body of the unified program agency may, in exceptional
21 circumstances, following notice and public hearing, exempt a
22 hazardous material specified in subdivision (n) of Section 25501
23 from Section 25506, if it is found that the hazardous material would
24 not pose a present or potential danger to the environment or to
25 human health and safety if the hazardous material was released
26 into the environment. The unified program agency shall send a
27 notice to the office and the secretary within 15 days from the
28 effective date of any exemption granted pursuant to this
29 subdivision.

30 (d) The unified program agency, upon application by a handler,
31 may exempt the handler, under conditions that the unified program
32 agency determines to be proper, from any portion of the
33 requirements to establish and maintain a business plan, upon a
34 written finding that the exemption would not pose a significant
35 present or potential hazard to human health or safety or to the
36 environment, or affect the ability of the unified program agency
37 and emergency response personnel to effectively respond to the
38 release of a hazardous material, and that there are unusual
39 circumstances justifying the exemption. The unified program

1 agency shall specify in writing the basis for any exemption under
2 this subdivision.

3 (e) The unified program agency, upon application by a handler,
4 may exempt a hazardous material from the inventory provisions
5 of this article upon proof that the material does not pose a
6 significant present or potential hazard to human health and safety
7 or to the environment if released into the workplace or
8 environment. The unified program agency shall specify in writing
9 the basis for any exemption under this subdivision.

10 (f) The unified program agency shall adopt procedures to
11 provide for public input when approving applications submitted
12 pursuant to subdivisions (d) and (e).

13 ~~SEC. 11.~~

14 *SEC. 12.* Section 25507.2 of the Health and Safety Code is
15 amended to read:

16 25507.2. ~~Unless~~ *Except as specified in this section, unless*
17 *required by a local ordinance, the unified program agency shall*
18 *exempt a business from application of Sections 25506, 25507,*
19 *25508.2, and 25511 to an unstaffed facility located at least one-half*
20 *mile from the nearest occupied structure from Sections 25508.2*
21 *and 25511, and shall subject the business to Sections 25505, 25506,*
22 *and 25507 only as specified in this section, if the facility is not*
23 *otherwise subject to the requirements of applicable federal law,*
24 *and all of the following requirements are met:*

25 (a) The types and quantities of materials onsite are limited to
26 one or more of the following:

27 (1) One thousand standard cubic feet of compressed inert gases
28 (asphyxiation and pressure hazards only).

29 (2) Five hundred gallons of combustible liquid used as a fuel
30 source.

31 (3) Corrosive liquids, not to exceed 500 pounds of extremely
32 hazardous substances, used as electrolytes, and in closed containers.

33 (4) Five hundred gallons of lubricating and hydraulic fluids.

34 (5) One thousand two hundred gallons of hydrocarbon gas used
35 as a fuel source.

36 (6) Any quantity of mineral oil contained within electrical
37 equipment, such as transformers, bushings, electrical switches,
38 and voltage regulators, if the spill prevention control and
39 countermeasure plan has been prepared for quantities that meet or
40 exceed 1,320 gallons.

1 (b) The facility is secured and not accessible to the public.

2 (c) Warning signs are posted and maintained for hazardous
3 materials pursuant to the California Fire Code.

4 (d) (1) Notwithstanding Sections 25505 and 25507, a one-time
5 business plan, except for the emergency response plan and training
6 elements specified in paragraphs (3) and (4) of subdivision (a) of
7 Section 25505, is submitted to the statewide information
8 management system. This one-time business plan submittal is
9 subject to a verification inspection by the unified program agency
10 and the unified program agency may assess a fee not to exceed the
11 actual costs of processing and for inspection, if an inspection is
12 conducted.

13 (2) If the information contained in the one-time submittal of the
14 business plan changes and the time period of the change is longer
15 than 30 days, the business plan shall be resubmitted within 30 days
16 to the statewide information management system to reflect any
17 change in the business plan. A fee not to exceed the actual costs
18 of processing and inspection, if conducted, may be assessed by
19 the unified program agency.

20 ~~SEC. 12.~~

21 *SEC. 13.* Section 25508.1 of the Health and Safety Code is
22 amended to read:

23 25508.1. Within 30 days of any one of the following events,
24 a business subject to this article shall electronically update the
25 information submitted to the statewide information management
26 system:

27 (a) A 100 percent or more increase in the quantity of a
28 previously disclosed material.

29 (b) Any handling of a previously undisclosed hazardous material
30 subject to the inventory requirements of this article.

31 (c) Change of business *or facility* address.

32 (d) Change of business ownership.

33 (e) Change of business name.

34 (f) (1) A substantial change in the handler's operations occurs
35 that requires modification to any portion of the business plan.

36 (2) For the purpose of this subdivision, "substantial change"
37 means any change in a facility that would inhibit immediate
38 response during an emergency by either site personnel or
39 emergency response personnel, or that could inhibit the handler's
40 ability to comply with Section 25507, change the operational

1 knowledge of the facility, or impede implementation of the business
2 plan.

3 ~~SEC. 13.~~

4 *SEC. 14.* Section 25531.2 of the Health and Safety Code is
5 amended to read:

6 25531.2. (a) The Legislature finds and declares that as the
7 state implements the federal accidental release prevention program
8 pursuant to this article, the Office of Emergency Services will play
9 a vital and increased role in preventing accidental releases of
10 extremely hazardous substances. The Legislature further finds and
11 declares that as an element of the unified program established
12 pursuant to Chapter 6.11 (commencing with Section 25404), a
13 single fee system surcharge mechanism is established by Section
14 25404.5 to cover the costs incurred by the office pursuant to this
15 article. It is the intent of the Legislature that this existing authority,
16 together with any federal assistance that may become available to
17 implement the accidental release program, be used to fully fund
18 the activities of the office necessary to implement this article.

19 (b) The Legislature further finds and declares that the owners
20 and operators of stationary sources producing, processing, handling,
21 or storing hazardous materials have a general duty, in the same
22 manner and to the same extent as is required by Section 654 of
23 Title 29 of the United States Code, to identify hazards that may
24 result from releases using appropriate hazard assessment
25 techniques, to design and maintain a safe facility taking those steps
26 as are necessary to prevent releases, and to minimize the
27 consequences of accidental releases that do occur.

28 (c) The office shall use any federal assistance received to
29 implement Chapter 6.11 (commencing with Section 25404) to
30 offset any fees or charges levied to cover the costs incurred by the
31 office pursuant to this article.

32 ~~SEC. 14.~~

33 *SEC. 15.* Section 118330 of the Health and Safety Code is
34 amended to read:

35 118330. (a) Whenever the enforcement agency determines
36 that a violation or threatened violation of this part or the regulations
37 adopted pursuant to this part has resulted, or is likely to result, in
38 a release of medical waste into the environment, the agency may
39 issue an order to the responsible person specifying a schedule for
40 compliance or imposing an administrative penalty of not more

1 than five thousand dollars (\$5,000) per violation. A person who,
2 after notice and an opportunity for hearing, violates an order issued
3 pursuant to this section is guilty of a misdemeanor.

4 (b) (1) In establishing the amount of the administrative penalty
5 and ordering that the violation be corrected pursuant to this section,
6 the enforcement agency shall take into consideration the nature,
7 circumstances, extent, and gravity of the violation, the violator's
8 past and present efforts to prevent, abate, or clean up conditions
9 posing a threat to the public health or safety or the environment,
10 the violator's ability to pay the penalty, and the deterrent effect
11 that the imposition of the penalty would have on both the violator
12 and the regulated community.

13 (2) If the amount of the administrative penalty is set after the
14 person is served with the order pursuant to subdivision (c) or after
15 the order becomes final, the person may request a hearing to dispute
16 the amount of the administrative penalty and is entitled to the same
17 process as provided in subdivision (c), whether or not the person
18 disputed the facts of the violation through that process.

19 (3) An administrative penalty assessed pursuant to this section
20 shall be in addition to any other penalties or sanctions imposed by
21 law.

22 (c) (1) An order issued pursuant to this section shall be served
23 by personal service or certified mail and shall inform the person
24 served of the right to a hearing.

25 (2) A person served with an order pursuant to paragraph (1) and
26 who has been unable to resolve the violation with the enforcement
27 agency may, within 15 days after service of the order, request a
28 hearing by filing with the enforcement agency a notice of defense.
29 The notice shall be filed with the agency that issued the order. A
30 notice of defense shall be deemed filed within the 15-day period
31 if it is postmarked within that 15-day period. If no notice of defense
32 is filed within the 15-day time period, the order shall become final.

33 (3) Except as otherwise provided in paragraph (4), a person
34 requesting a hearing on an order issued pursuant to this section
35 may select the hearing officer specified in either subparagraph (A)
36 or (B) of paragraph (4) in the notice of defense filed with the
37 enforcement agency pursuant to paragraph (2). If a notice of
38 defense is filed, but no hearing officer is selected, the enforcement
39 agency may select the hearing officer.

1 (4) Within 90 days of receipt of the notice of defense by the
2 enforcement agency, the hearing shall be scheduled using one of
3 the following:

4 (A) An administrative law judge of the Office of Administrative
5 Hearings of the Department of General Services, who shall conduct
6 the hearing in accordance with Chapter 4.5 (commencing with
7 Section 11400) of Part 1 of Division 3 of Title 2 of the Government
8 Code, and the enforcement agency shall have all the authority
9 granted to an agency by those provisions.

10 (B) (i) A hearing officer designated by the enforcement agency,
11 who shall conduct the hearing in accordance with Chapter 4.5
12 (commencing with Section 11400) of Part 1 of Division 3 of Title
13 2 of the Government Code, and the enforcement agency shall have
14 all the authority granted to an agency by those provisions. When
15 a hearing is conducted by an enforcement agency hearing officer
16 pursuant to this clause, the enforcement agency shall issue a
17 decision within 60 days after the hearing is conducted. Each
18 hearing officer designated by an enforcement agency shall meet
19 the requirements of Section 11425.30 of the Government Code
20 and any other applicable restriction.

21 (ii) An enforcement agency, or a person requesting a hearing
22 on an order issued by an enforcement agency, may select the
23 hearing process specified in this subparagraph in a notice of defense
24 filed pursuant to paragraph (2) only if the enforcement agency has
25 selected a designated hearing officer and established a program
26 for conducting a hearing in accordance with this paragraph.

27 (5) The hearing decision issued pursuant to this subdivision
28 shall be effective and final upon issuance by the enforcement
29 agency. A copy of the decision shall be served by personal service
30 or by certified mail upon the party served with the order, or their
31 representative, if any.

32 (6) The person has a right to appeal the hearing decision if,
33 within 30 days of the date of receipt of the final decision pursuant
34 to paragraph (5), the person files a written notice of appeal with
35 the enforcement agency. The appeal shall be in accordance with
36 the Administrative Procedure Act (Chapter 3.5 (commencing with
37 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
38 Code).

39 (7) A decision issued pursuant to paragraph (6) may be reviewed
40 by a court pursuant to Section 11523 of the Government Code. In

1 all proceedings pursuant to this section, the court shall uphold the
2 decision of the enforcement agency if the decision is based upon
3 substantial evidence in the record as a whole. The filing of a
4 petition for writ of mandate shall not stay an action required
5 pursuant to this chapter or the accrual of any penalties assessed
6 pursuant to this chapter. This subdivision does not prohibit the
7 court from granting any appropriate relief within its jurisdiction.

8 (d) A provision of an order issued under this section, except the
9 imposition of an administrative penalty, shall take effect upon
10 issuance of the order by the enforcement agency if the enforcement
11 agency finds that the violation or violations of law associated with
12 that provision may pose an imminent and substantial danger to the
13 public health or safety or the environment. A request for a hearing
14 or appeal, as provided in subdivision (c), shall not stay the effect
15 of that provision of the order pending a hearing decision. If the
16 enforcement agency determines that any or all provisions of the
17 order are so related that the public health or safety or the
18 environment can be protected only by immediate compliance with
19 the order as a whole, the order as a whole, except the imposition
20 of an administrative penalty, shall take effect upon issuance by
21 the enforcement agency. A request for a hearing shall not stay the
22 effect of the order as a whole pending a hearing decision.

23 (e) The enforcement agency shall consult with the district
24 attorney, county counsel, or city attorney on the development of
25 policies to be followed in exercising the authority delegated
26 pursuant to this section as it relates to the authority of the
27 enforcement agency to issue orders.

28 ~~SEC. 15.~~

29 *SEC. 16.* No reimbursement is required by this act pursuant to
30 Section 6 of Article XIII B of the California Constitution because
31 the only costs that may be incurred by a local agency or school
32 district will be incurred because this act creates a new crime or
33 infraction, eliminates a crime or infraction, or changes the penalty
34 for a crime or infraction, within the meaning of Section 17556 of
35 the Government Code, or changes the definition of a crime within
36 the meaning of Section 6 of Article XIII B of the California
37 Constitution.

O